IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9266 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHEMICAL KAMDAR SANGH,

Versus

DY. COMMISSIONER OF LABOUR AND STATE IMPLEMENTATION &

Appearance:

MR AK CLERK for the Petitioner.

Ms.Sheth, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

UNSERVED-REFUSED (R) for Respondent No. 3

MR GK RATHOD for Respondent No. 4

MR MUKUL SINHA for Respondent No. 4

MR MURALI N DEVNANI for Respondent No. 5

RULE SERVED BY DS for Respondent No. 6

MR KM PATEL for Respondent No. 7

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/08/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner-Union has challenged the communication / recommendation of respondent No.1 at Annexure 'A' dated 14th August, 2002. By the aforesaid communication, the Deputy Labour Commissioner and State Implementation and Evaluation Officer has informed the Chief Operating Officer (COO) of Tata Chemicals Limited, Mithapur to give recognition under the Code of Discipline to Tata Chemicals Skilled Mazdoor Sangh, Mithapur, i.e. respondent No.4 herein, on the ground that majority employees of the Company are the members of the said Union, i.e. 65% of the employees. The aforesaid recommendation made by the said Officer to the Company, by his letter dated 14th August, 2002, is challenged at the instance of the petitioner-Union on the ground that the Deputy Commissioner of Labour and State Implementation and Evaluation Officer, who is joined as respondent No.1 in the petition, has not carried out the verification process in a proper manner and that the said Officer has carried out the verification process contrary to the Code of Discipline.

2. The petitioner Union is a registered Union, having its registration No.1533. According to the petitioner, the petitioner Union has got 1651 members out of 1900 workmen of respondent No.7-Company. There are five unions of workmen of respondent No.7-Company. The controversy in question started in view of the application submitted by respondent No.3-Union to the Deputy Labour Commissioner, Rajkot for being recognised as majority Union in respondent No.7-Company. On 27.12.2001, one Mr.M.V. Jadeja, Deputy Commissioner of Labour, Rajkot, addressed a letter to the petitioner-Union, calling upon the said Union to furnish necessary information by 10th January, 2002. Having received the aforesaid intimation from the said Mr.Jadeja, the petitioner-Union addressed a letter to the said Mr.Jadeja, Deputy Commissioner of Labour, requesting him to discontinue the proceedings, as, the petitioner-Union had no confidence in the said Mr.Jadeja. The said apprehension was aired by the petitioner in view of the past controversy.

3. At this stage, reference is required to be made to the controversy, which had arisen in the past. In the year 1987, respondent No.4-Union preferred an application for being recognised as a Majority Union and pursuant thereto, said Mr.M.V. Jadeja, Deputy Commissioner of Labour and State Implementation and Evaluation Officer, started verification process under the Code of Discipline. The petitioner-Union had challenged the

order by way of filing a writ petition, being Special Civil Application No.1840 of 1988. Similarly, respondent No.4-Union herein also challenged the decision of the Authority by way of filing another writ petition, being Special Civil Application No.1663 of 1988. There was another writ petition filed by Chemical Kamdar Sangh, being Special Civil Application No.1841 of 1988. Since all these petitions were filed in connection with the recognition of the majority union of the workers of the Company, all these matters were disposed of by a Division Bench of this Court, by a common order dated February 8, 1991. At that time, the Assistant Labour Commissioner, Ahmedabad, made verification of membership of respective unions as on January 1, 1987 and the said Officer passed an order dated November 30, 1987, holding that Tata Chemicals Skilled Mazdoor Sangh was the majority Union (present respondent No.4 herein). The said order was challenged by Chemical Kamdar Sangh by filing Special Civil Application No.1840 of 1988. The said Union, viz., Chemical Kamdar Sangh, also filed another petition, being Special Civil Application No.1841 of 1988, praying that the Ahmedabad Labour Commissioner had no jurisdiction, power or authority to proceed with the verification of membership of the Tata Chemicals Skilled Mazdoor Sangh.

4. In the meanwhile, the Government, at that time, passed an order on February 20, 1988 on the basis of the application submitted by Chemical Kamdar Sangh, and the order passed by the Assistant Labour Commissioner was taken in review. Being aggrieved by the aforesaid order, Tata Chemicals Skilled Mazdoor Sangh filed a petition, being Special Civil Application No.1663 of 1988, a reference of which is made earlier.

5. The Division Bench of this Court, after hearing the parties, came to the conclusion that so far as Special Civil Application No.1663 of 1988 is concerned (which was filed by Tata Chemicals Skilled Mazdoor Sangh, respondent No.4 in this petition), the order dated February 20, 1988 passed by the Government on the application of Chemical Kamdar Sangh is without affording an opportunity of being heard to the said petitioner. The Division Bench also further held that the Government has no power to review the order in question. Since the order was passed without hearing the said petitioner, the said petition was allowed by this Court.

So far as Special Civil Application No.1840 of 1988 is concerned, the Division Bench found that the Union was not given appropriate opportunity by the Assistant Labour Commissioner. It is also found by the

Division Bench that since appropriate opportunity was not given to the petitioner of that petition, by the Assistant Labour Commissioner and since the finding by the Assistant Labour Commissioner, that representatives of Chemical Kamdar Sangh were not present and did not cooperate with the verification process of their membership, cannot be said to be a correct finding, as, during the relevant days, the Assistant Labour Commissioner was himself on leave, the decision of he Assistant Labour Commissioner is required to be quashed and set aside. Ultimately, the decision of the Assistant Labour Commissioner was set aside by the Division Bench. Under the circumstances, the Division Bench disposed of all these petitions and the Division Bench directed the Assistant Labour Commissioner, Ahmedabad to undertake verification of membership of the respective Unions afresh and within a stipulated time. Accordingly, all the aforesaid petitions were disposed of by the Division Bench by its order dated February 8, 1991.

Since the present verification process was undertaken by said Mr.Jadeja, the petitioner was having an apprehension that he may not undertake the said exercise properly and under the circumstances and in view of the aforesaid background of the earlier litigation, the petitioner-Union addressed the aforesaid letter, showing no confidence in the said Mr.Jadeja. The petitioner-Union has made a representation, in detail, to said Mr.Jadeja by the aforesaid letter dated 22nd January, 2002, wherein they have referred to the earlier proceedings undertaken by him in the year 1987. Ultimately, the said Officer Mr.M.V. Jadeja, by his letter dated 25th January, 2002, which is at page 62 of the compilation, informed the Labour Commissioner, Gujarat State, Ahmedabad, requesting him to relieve him from the aforesaid responsibility, as, serious allegations were levelled against him. In the said letter, he requested the Commissioner of Labour to initiate the said proceedings, through Head Office, so that, in future, interest of the workmen is not prejudicially affected. In view of the aforesaid circumstances, ultimately, the said verification process was handed over to Mr.A.K. Patel, Deputy Commissioner of Labour, along with one K.V. Damor, Assistant Labour Commissioner, Ahmedabad and Mr.M.O. Bhatt, Assistant Labour Commissioner, Jamnagar. The re-nomination of the Officers, who were required to undertake this process, was accordingly informed by letter dated 29.4.2002, which is at page 64 of the compilation. In the said letter, it is also mentioned that the particulars which are demanded by the Deputy Labour Commissioner, by his letter dated

27.12.2001, may be handed over personally to the said Officer Mr.A.K. Patel within 10 days by way of personal delivery. It is also mentioned in the said letter that if such particulars are not handed over within the said period, ex parte enquiry will be initiated. It seems that the said letter was sent by Fax to respondent No.7, and it was handed over to the petitioner through the Peon of respondent No.7-Company. The said Mr.A.K. Patel took over the aforesaid task of verification of membership of a particular Union, who represents the employees of respondent No.7-Company.

Subsequently, the said Mr.A.K. Patel continued with the proceedings.

6. The petitioner-Union thereafter made certain allegations against the newly appointed Officer and certain grievances were made by their letter dated 1st May, 2002. However, the petitioner-Company had not objected to proceedings being continued by the said Mr.A.K. Patel. The petitioner-Union wrote a letter dated 9th May, 2002, informing Mr.Patel and other Officers, about the telephonic conversation which had taken place between Mr.A.K. Patel and the petitioner-Union, wherein it was stated that in view of the disturbed situation in Ahmedabad, the record should not be brought to Ahmedabad, and a prayer was made that, in view of some marriage ceremony in the family of the General Secretary of the petitioner-Union on 15.5.2002, the proposed visit, which was to be made on 16.5.2002, may be adjourned to any other suitable date. The Deputy Commissioner of Labour thereafter, by his letter dated 9.5.2002, informed the petitioner-Union that whatever particulars which have been called for by letter dated 29th April, 2002 may be sent within 10 days. The petitioner-Union, thereafter, requested to give some time by their letter dated 10th May, 2002. Thereafter, by letter dated 13th May, 2002, Mr.A.K. Patel, Deputy Commissioner of Labour, wrote a letter to the Government Labour Officer, Jamnagar, informing him that the Officers will be visiting Tata Chemicals, Mithapur, Jamnagar, on 16th May, 2002, and asked the Government Labour Officer to inform the concerned Labour Unions, accordingly. The petitioner-Union, thereafter, submitted necessary documents to Mr.A.K.Patel, along with the letter dated 16th May, 2002, which is produced at page 82 of the compilation. The petitioner-Union also wrote another letter, dated 17th May, 2002, to the Deputy Commissioner of Labour Mr.A.K. Patel, informing him that in a joint meeting held on 16th May, 2002 in the premises of Tata Chemicals, one Mr.M.J. Patel and Mr.Kirit Barot had

remained present but they refused to sign the proceedings, and they clearly informed Mr.Patel that they are not willing to take part in the verification process. It is requested that since the said Unions had not taken part in the verification process, their claim may not be taken into consideration. There are so many other letters written by the petitioner from time to time, which are all produced in the compilation. In some of the letters, the petitioner also informed said Mr.Jadeja that the proceedings undertaken are against the Code of Discipline and that there is a breach of procedure provided under the said Code of Discipline.

7. In the meanwhile, the petitioner also wrote a detailed letter on 10th July, 2002 to Mr.A.K. Patel, Deputy Commissioner of Labour, in which it has given the history of the earlier proceedings, which were initiated before this Court, etc. In the said letter, it is pointed out that on 17th May, 2002, the record of petitioner-Union was verified fully (i.e. the said verification was 100%) and the said procedure was over on 17th May, 2002 at 11.30 p.m. It is pointed out in the said letter that since other Unions had not cooperated in the enquiry, the application of the other Unions for giving recognition should be rejected promptly and the proceedings may be dropped immediately. The Deputy Commissioner of Labour thereafter, on 10th July, 2002, wrote a letter to all the Unions, informing that after undertaking preliminary stage verification of the membership of the petitioner-Union, it is necessary to undertake further proceedings, as provided under the Code of Discipline. It is mentioned in the said letter that necessary provisions have been made in order to invite objections and if any Union wants to send any objection, after going through the record, the same may be sent within 10 days. It is mentioned in the said letter that, prima facie, it is found that so many employees are members of more than one Union. The Unions were accordingly informed whether they were willing to undergo the process in camera or through any alternative arrangement. For that purpose, they were asked to give their reply. The petitioner-Union, thereafter, wrote a letter to the Deputy Commissioner on 16.7.2002, informing him that so far as the letter dated 10.7.2002 is concerned, the same is given during the Mithapur Camp. It is mentioned that, in the scrutinised list, the strength of the Chemical Kamdar Sangh (the petitioner Union) is mentioned as 1466. As against that, on earlier occasion, on 16th May, 2002, during the Mithapur camp, for the period between 1.6.2001 and 30.11.2001, the strength of the Members of the Union was 1651. By the

said letter, the Deputy Commissioner was asked as to why the name of 185 members of the petitioner-Union are not shown in the scrutinised list. He was requested to show as to why 185 members have not been shown in the aforesaid scrutinised list. However, by another latter dated 27.5.2002, the petitioner-Union informed Mr.A.K. Patel that their total strength should be taken as 1457+38, i.e. 1495. The petitioner-Union, in the meanwhile, also wrote another letter to the Deputy Commissioner, informing that the contesting Unions had never remained present earlier and have never cooperated in the verification process. They have also made some grievance about some writing on the black board at the main gate of the company.

8. On behalf of the President of respondent No.5-Union, a letter dated 14th July, 2002 was written, wherein it is mentioned that even the office bearers of the petitioner-Union are also shown as members of the respondent No.4-Union. By another letter dated 25th July, 2002, the petitioner-Union informed the Deputy Commissioner of Labour, objecting inclusion of certain members of their Union as belonging to respondent No.4-Union in their register. The names of such employees are also mentioned at page 135 of the compilation.

9. The grievance of the petitioner-Union before the Deputy Commissioner of Labour was that there are certain names, which could not have been included as belonging to respondent No.4-Union and they raised serious dispute about the total number of members belonging to respondent No.4-Union. The Deputy Commissioner of Labour thereafter conducted personal verification of all the concerned employees, on whose behalf, objections were raised by either Union, on 7th and 8th August, 2002, and after completing the said in camera verification, ultimately, recommended to the management to give recognition to respondent No.4-Union by the aforesaid impugned letter / communication at Annexure 'A' to the petition. The said procedure adopted by the Deputy Commissioner of Labour is challenged by way of this petition on various grounds.

10. The grievance of the petitioner-Union is that, from day one, the procedure prescribed in the Code of Discipline is given a goby by Mr.A.K. Patel, Deputy Labour Commissioner. The main grievance of the petitioner-Union is that on 16th May, 2002, the Union was compelled to produce its record, even though the stipulated time of 10 days was not over. It is also the grievance of the petitioner-Union that even though the

original applicant Union as well as respondent No.4-Union had not cooperated in the proceedings, yet, their claim was allowed to be processed and was taken into consideration. They have also challenged the procedure adopted by the Officer for personal verification by way of in camera procedure. It is also the grievance of the petitioner-Union that, on the relevant day, during the Mithapur Camp, record of other Unions were not verified and, subsequently, their record was verified at Ahmedabad. The petitioner, accordingly, even wrote a letter to the Management, requesting it not to give recognition to respondent No.4-Union, as they would like to challenge the decision of the Deputy Commissioner of Labour by way of appropriate proceedings in the court of law. The in camera procedure adopted by the Officer is also challenged on the ground that there is no in camera procedure in the Code of Discipline to call each and every workman for personal interrogation and only sample checking was required to be done. According to the petitioner-Union, therefore, the Deputy Commissioner of Labour has violated the Code of Discipline in toto and from the beginning, the entire Code of Discipline is given a goby and under the circumstances, it is prayed that the decision of respondent No.1, in recommending respondent No.4-Union for giving recognition, should be set aside and respondent No.1 may be directed to undertake de novo proceedings for verification of the membership of the respective Unions.

11. During the course of the hearing, it was submitted by the learned Advocate for the petitioner-Union that some members were wrongly shown. Even some office bearers of the petitioner-Union are shown as members of respondent No.4-Union. The petitioner-Union has accordingly challenged the decision of respondent No.1 in recommending respondent No.4-Union for recognition on the ground that from the very beginning, the Code of Discipline is not followed and a soft treatment was given to respondent No.4-Union by the verifying Officer, who has undertaken the process of verification.

During the course of the hearing, Mr.Clerk has submitted, in detail, the so-called violation on the part of the Officer from the stage of calling the Unions to produce their record, checking the records and registers of the Union, giving some time to respondent No.4-Union for producing their documents and adjourning the enquiry by way of giving muster roll of the company to respondent No.4-Union as well as the last stage in camera procedure adopted by respondent No.4 for personally verifying the

strength of the workmen. The said procedure is attacked, in detail, by the petitioner-Union and, ultimately, it is prayed that respondent No.1 may be directed to initiate de novo enquiry for verifying the membership of the concerned Unions.

12. The petition is resisted by respondent No.4-Union and on behalf of the said Union, Dr.Sinha, learned Advocate, submitted that the Code of Discipline is not having any statutory force. He submitted that on earlier occasion, the Division Bench had allowed the petition of the present Union on the ground that appropriate opportunity was not given by the concerned Officer and that the Union was not allowed to produce the documents and that the order was passed ex parte. He submitted that the concerned Officer has followed the Code of Discipline and reasonable opportunity is given to all the Unions to produce the record. It is submitted that the petitioner-Union has always tried to obstruct the verification process and its intention was only to delay the verification process. It is submitted that the Deputy Labour Commissioner has given fair opportunity to all the Unions and simply because, on request of either Union, if the enquiry is adjourned for producing the documents or if muster rolls of the Company are given to the concerned Union, it cannot be said that the Officer has acted illegally. On the contrary, the Officer has tried to comply with the principles of natural justice to the fullest extent. It is submitted by Dr.Sinha that when so many objections were lodged regarding inclusion of the name of a particular workman, instead of random sampling, if the Officer has called them personally for personal verification in camera, it cannot be said that he has committed any illegality or irregularity in following the said procedure. He submitted that it is a more scientific way of verification, by calling the workmen who are in the list of objections. He submitted that following the said procedure, no prejudice is caused to the petitioner-Union, as, ultimately, truth has come out. He further submitted that whether a particular person should have been included in the list of the petitioner-Union or in any other Union, can never be considered by this Court in a petition filed under Article 226 of the Constitution of India, as, it is in the realm of appreciation of evidence, or, in any case, it is a highly disputed question of fact, which cannot be adjudicated by this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution.

Mr.Clerk, at one stage, submitted that this Court may call for the record and go through the entire record

to find out the exact membership of each of the Unions. However, in my view, it is not desirable that the Court itself should go through each and every documentary evidence, as, that duty is assigned to respondent No.1 and this Court is not required to undertake that exercise. In fact, the said argument of Mr.Clerk itself is suggestive of the fact that highly disputed questions of fact are involved in this matter.

13. On behalf of the State, affidavit-in-reply is filed, starting from page 203 of the compilation, and an additional affidavit-in-reply is also filed. It is stated that the procedure conducted by the Officer is in consonance with the Code of Discipline. Relevant part of the affidavit-in-reply is as under :-

" ... ...

8. I say that it is made clear at this juncture that verification was done in accordance with law. I say that initially an application was tendered by the Union before the Deputy Labour Commissioner, Rajkot for the purpose of verification. I say that subsequently the petitioner-union find fault, the Deputy Labour Commissioner, Rajkot on request being made to the Labour Commissioner and in view of the communication dated 22nd April, 2002, the Labour Commissioner had entrusted the said exercise to the deponent and Shri K.V. Damor and other officers. I say that accordingly the entire record lying at the Deputy Labour Commissioner's Office, Rajkot were transferred to the Deputy Labour Commissioner, Ahmedabad.

9. I say that thereafter on 9th May, 2002, the Deputy Labour Commissioner, Ahmedabad, informed all the Unions to submit their remarks and further details pertaining to membership. I say that all the Unions except petitioner-Union did not submit the errors pertaining to the membership and therefore the deponent personally went to TATA Chemicals along with staff to collect the records and accordingly on 16th May, 2002 the petitioner-union handed over the records to the Deputy Labour Commissioner, Ahmedabad.

10. I say that on 17th May, 2002, at Mittapur Office of the Labour Department, further proceedings were commenced and membership

verification was carried out. I say that all the Unions remained present before the authority. However, two Unions namely 1) Chemical Skilled Mazdoor Sangh and TATA Chemicals Employees Unions refused to disclose the membership in presence of petitioner-union and informed the authority that they will disclose membership at Ahmedabad Office. I say that these two unions have not complied with the direction of the Deputy Labour Commissioner for disclosing the membership. I say that these two unions took technical plea in writing that they wanted to go through copy of the muster roll of the company before disclosing membership.

11. I say that thereafter on 20th May, 2002, at Mitapur Office of the Labour Department, copies of muster roll were provided to all the unions including the above referred two unions. I say that thereafter objecting unions disclosed membership at Ahmedabad Office. I say that in view of the provisions of Code of Discipline, if the said one member is found in more than one union, then list of members to that effect is required to be provided to all the unions and accordingly because of overlapping names in the different unions, list of members were given to all unions on 10.7.2002. I say that objections were invited by the deponent within 10 days to make verification with regard to duplicate in membership. I say that however in view of the application tendered by the petitioner-union, further time was granted. Thereafter, the petitioner union vide letter dated 16.7.2002 requested further time of 10 days which was also granted to the petitioner-Union and the inquiry was started on 7th August, 2002 and 8th August, 2002 in camera.

12. I say that in view of the provisions of code of discipline, all the workers who were found to be members of more than one union were called in person and were asked to tender their explanation with regard to their membership in any one union during the in camera verification. Hereto annexed and marked Annexure-I is a copy of the letter in which members have given their statement before the authority in camera verification. I say that accordingly, 1744 workers statements were recorded in camera verification and out of 1744, 1253 workers were

found to be members of TATA Chemicals Skilled Mazdoor Sangh and 453 workers were found to be members of petitioner-union and 56 workers were found to be members of other unions. I say that accordingly, the order came to be passed by the present respondent No.1 and 2 and copies of which is annexed by the petitioner. I say the order passed by the respondent is in accordance with law and does not call for any interference by this Hon'ble Court.

... ..."

Mr.A.K. Patel, Deputy Labour Commissioner, has also filed a further affidavit, the relevant portion of which reads as under :-

" ... ...

5. I say that I had personally visited Mithapur at Company's premises along with 3 other officials to collect the records mainly of the petitioner union since by that time only he had not submitted the same. At that time the petitioner's union submitted his information personally. Respondent No.4 union had submitted two letters dated 13.5.2002 and 15-16.5.2002. In the letter dated 13.5.2002 they had mentioned that I should not accept the information submitted by the petitioner as they fail to produce the same till date. Whereas by another letter dated 15/16.5.2002, it had asked copy of muster roll of respondent No.7 company by stating that petitioner union had submitted his information at belated stage and hence it should be provided to it. The copies of said letters are on the same day and subsequently by letter dated 17.5.2002 I had called upon all the Unions to send their 2 representatives for verification of the documents and information already submitted by them respect to letter dated 27.12.01 and 9.5.2002. It is required to be noted here that as per Code of Discipline once the unions submit their information are to be called for the verification by the verifying officer to examine the correctness of the information tendered by them. Accordingly, the petitioner, respondent No.5 and 6 unions sent their representatives for verification which has been done in their presence. So far as Respondent No.4 was concerned since it had asked

for providing muster roll of the company for verification purpose it had not sent any of its representative on that day. The petitioner union had also given one letter dated 17.5.2002 stating that since respondent No.3 & 4 had not participated in verification process they should be dropped. By another letter of the same date the petitioner union had requested to give him all the information, documents proof and records of other unions. Thus, the petitioner union as well as respondent No.4 both had in their respective letters stated that either the other union should be dropped or the records of the other union should not be accepted.

6. I say that in response to the letter dated 16.5.2002 representative of respondent No.4 was provided with xerox copy of muster roll on 20.5.2002 when he visited office at Ahmedabad. Similarly I had sent the xerox copy of muster roll to all other remaining unions vide letter dated 22.5.2002. On the same day I had addressed letter to respondent No.3 to submit its written statement since it had applied for the recognisation. Thereafter respondent No.3 and 4 had come for verification at Ahmedabad office for their records / documents earlier submitted by them.

7. I say that on completion of verification of documents earlier submitted by all the unions the scrutiny had been done at our office with respect to list of members, total employees on basis of records made available by each union. At that time it was found that as per the information tendered by each union with respect to their members, the total strength of employees of respondent No.7 Company comes to 5651 as against 2152, total number of employees mentioned in the muster roll handed over to me by respondent No.7 Company. Of course, out of the 2152 mentioned in the muster roll there were some badli workers, daily workers, etc., who were not regular employees and hence were not required to be for counted for purpose of membership of any union. Hence in all 1930 employees as per muster roll of respondent No.7 Company were to be considered. On scrutiny it was further found that there were 134 members who were members of only one union out of the 5 unions whereas 5517 workers were found to be the member of more than one union.

Out of these 134 workers 9 had stated to be member of petitioner Union, 121 had stated to be the member of Respondent No.4 union and 4 had stated to be member of other remaining unions, i.e. respondent No.3, 5, and 6. My office had therefore, prepared computer list of 134 workers who were members of one union as well as 5517 workers who were members of more than one union. I had therefore, intimated all the unions vide letter dated 1.7.2002 to remain present on 10.7.2002 while stating that on scrutiny the workers have been found to be the members of more than one union. So that the list could be shown to the representative of union. But later on I had handed over the computer copy of said list to each union personally on 10.7.2002 to all Unions when we visited at Mithapur to which the representative of each union had given acknowledgment. At that time, they were also requested to send their objection within 10 days to Ahmedabad office and to state whether they would like to make further spot inquiry, 'In camera' or by any other system so that the final stage procedure could be completed.

8. I say that as per Code of Discipline the personal interrogation was to be done by random sampling system. But looking to the fact that large number of workers were stated to be the members of more than one union I decided to verify from each worker at Mithapur with respect to their membership of the union. I had therefore made an arrange intimated the company to intimate its workers to remain present at Mithapur at company's premises for "In Camera" procedure so that their membership of the union could be ascertained. I further state that thereafter I had gone personally there at Mithapur along with my other officers, Shri M.N. Gameti and Shri B.V. Prajapati and on 7.8.2002 and 8.8.2002 conducted in camera proceedings in presence of two officers and myself in separate room. We personally called each worker who remained present to ascertain from them with respect to their membership of the Union. I say that with a view to find out their wishes the forms were prepared in Gujarati to facilitate the calculation in which each worker has made his statement and thereupon sign them. Thus this exercise has been done by us in separate room i.e. "In Camera" in presence of my two

officials, concerned workman and myself. It may be noted here that for in camera procedure in 1796 (Total 1930-134 workmen) workers were to remain present whose statements were to be taken "In Camera". However, at that time 186 workers did not remain present as a result, in all the statements of 1610 workers were taken in camera. It is further required to be noted that 134 workers were found to be the member of only one union and hence their statements "In Camera" was not taken at all.

... ..."

In the affidavit-in-reply filed on behalf of the contesting Union, it is stated as under :-

" ... ...

4. xxx xxx xxx

(c) It is further submitted that the Dy. Labour Commissioner does not act as the State Implementation and Evaluation Officer under any of his statute and therefore he is not the statutory authority so far as the code of discipline is concerned. Merely because the employer and the employee have voluntarily agreed to be regulated under the non statutory regulation framed by the Central Government does not permit the petitioner to approach this Court for writ of mandamus against the State Implementation and Evaluation Officer since he does not act in the capacity of a statutory authority which determining the membership of any union.

(d) Otherwise also the petition involves highly disputed questions of facts which cannot be resolved or decided by this Hon'ble Court under Article 226 of the Constitution of India. On this ground also the petition is not maintainable in law and the petition is therefore ordinary civil jurisdiction.

5. xxx xxx xxx

(i) With regard to para 25 of the petition, I say and submit that the statements made therein are not correct. It is submitted that in fact on the relevant date i.e. on 16th May 2002, the deponent himself was not present before the Hon'ble Authority and, therefore, the submissions made in the said paragraph has no substance. Respondent herein respectfully submits that respondent No.4 was present and represented by through two representatives namely Shri M.J. Patel and Shri Kirit Barot named in the paragraph and had already represented their objections before the Authority. It is further submitted that the respondent no.4 had asked for certain information and documentary evidence from the authority on that date. The letters submitted by respondent No.4 Union to the authority on 16th May, 2002 are annexed hereto and marked as ANNEXURE-R/1. The averments made by the petitioner in para No.25 of the petition with regard to respondent No.5 & 6 are therefore not admitted by me. It is further submitted that the respondent No.4 Union had submitted all the required documents and information to the authority in response to the first notice of the authority dated 27th December, 2001, a copy of which is annexed hereto and marked as ANNEXURE R2. It is further submitted that on 16th May, 2002, the petitioner Union was alone called to submit their information as a last opportunity. I annex hereto the notice of the authority dated 29th April 2002 addressed to the General Secretary of the petitioner Union and mark the same as ANNEXURE R-3. It is significant to note the footnote of the said notice which clearly states that all the unions which have not submitted the information as asked for by the Dy Labour Commissioner should do so immediately. As the Respondent No.4 had already submitted all the required information in response to the letter dated 27th Dec. 2001, they had nothing to submit on 16th

May, 2002.

... ..."

14. I have heard learned Advocates for both the sides in great detail and I have also gone through the record of the case. The principal question which is required to be decided in this petition is whether respondent No.1, Deputy Commissioner of Labour and State Implementation and Evaluation Officer, has committed any error while conducting the said procedure of verification and whether any prejudice is caused to any of the Unions in the matter of verification of its members.

15. At this stage, it is fruitful to rely upon the procedure prescribed for verification of membership of Unions for the purpose of recognition under the Code of Discipline. Detailed procedure is prescribed. The relevant portion reads as under :-

" ... ...

APPENDIX X

PROCEDURE FOR VERIFICATION OF MEMBERSHIP OF UNIONS FOR THE PURPOSE OF RECOGNITION UNDER THE CODE OF DISCIPLINE

(1) On receipt of a representation from a union for recognition under the Code of Discipline, the Central/State Implementation Machinery will first ascertain :

(a) the names of unions functioning in the establishment together with their number and date of registration by reference to the Registrar of Trade Unions concerned;

(b) whether any of the unions functioning in the establishment was responsible for an established breach of the Code during the past one year. (By an 'established breach of the Code' is meant a breach reported to and on enquiry established by the Implementation Machinery of the State or the Centre);

(c) whether the existing recognised union, if any, has completed a period of two years of recognition.

(2) After ascertaining the above facts, the Implementation Machinery at the Centre will request the Chief Labour Commissioner to arrange verification of membership of unions entitled to recognition under the Code. In the States, either the Implementation Officer will carry out this verification or get it done through the State Labour Commissioner, depending on the practice obtaining in each State.

(3) The verification officer will ask the Unions by registered post / A.D. to produce before him within 10 days, at the stipulated place and time, a list of their members who have paid subscription for at least 3 months during the period of six months immediately preceding the date of reckoning along with (i) membership-cum-subscription register, (ii) receipt counterfoils, (iii) cash and account books, (iv) Bank books and (v) a copy of the constitution of the union. If the number of members of a union is more than 10000 a longer time on the basis of one additional day for every 2000 members over 10000 should be given for submission of its list of members and records.

If any of the unions fails to produce the list of its members and records a second and final notice will be given by registered post / A.D. asking it to produce them within 10 days or a longer period as mentioned above, if the membership of the union exceeds 10000 at the stipulated place and time. If the union fails to produce the list and records on the second occasion also no further attempt will be made to verify its membership. However, in respect of the union which has submitted its list and records, the verification officer will examine them and report its membership without inviting objections from the rival union, i.e. the defaulting union, and without doing any personal verification as mentioned in para (7) below. If more than one union produces its lists and records, the verification officer will check their membership in the manner described below ignoring the union which fails to produce its records.

(4) The date of reckoning, mentioned in para (3) above will be taken as the first of the month in which verification begins, i.e. when the

verification office asks the unions to submit their lists and books for scrutiny.

(5) The verification officer will then check the list of members with the membership register and receipt counterfoils and exclude those who have not paid 3 months subscription during the period of six months preceding the date of reckoning. This examination will be 100 per cent and will be done in the presence of the office bearers of the union concerned but not in the presence of the office bearers or representatives of the rival union. If the union objects to the elimination of any member from its membership register, it will have to give full and valid reasons for such an objection. The verification officer will then re-check the records (i.e. membership register, receipt books, etc.) to ascertain the correct position. The verification officer will scrutinise carefully the cash and accounts books as well as the bank book maintained by a union to ascertain that the amount of subscription shown to have been received has been properly accounted for and that the amounts received as subscription are not incompatible with the total number of persons shown in the register and the list furnished by the union. The verification officer will also ensure that only those workers are included in the lists of the unions who were on the Muster Roll of the management on the date of reckoning.

(6) The verification officer will thereafter intimate, in writing to the unions concerned that the verified lists of their respective members are ready for inspection by the union representative at an appointed time and place. The union will also at the same time be informed that after inspection of the verified list of members of the rival union(s), they should send, in writing, their specific objections, if any, to the entries in these lists, within 10 days or a longer period if the number of objections is likely to exceed 10000 on the basis of one additional day for every 2000 objections over and above 10000 of the date of inspection. It should be made clear to the unions that general and vague objections like inflated membership, etc., will not be considered; the objections should give names of persons whose membership of a union is objected to and the reasons therefor.

The union representatives will be allowed to make notes from the verified lists shown to them in the presence of the verification Officer, they will, however, not be allowed to take any of the lists, or a copy of the lists will be given to them.

(7) The objections received from the unions will then be verified by personal interrogation, by the verification officer, of the members on the basis of the following systematic sampling system :-

(i) if the Objection List furnished by a union consists of 500 or less names of members, the number of persons to be personally interrogated should be 20 per cent subject to a minimum of 100;

(ii) If the Objection List furnished by a union consists of more than 500 but not more than 1000 names, the number of persons to be personally interrogated should be 15 per cent subject to a minimum of 100;

(iii) If the Objection List furnished by a union consists of more than 1000 but not more than 2000 names, the number of persons to be personally interrogated should be 10 per cent subject to a minimum of 150;

(iv) If the Objection List furnished by union consists of more than 2000 but not more than 5000 names, the number of persons to be personally interrogated should be 5 per cent subject to a minimum of 200; and

(v) If the Objection List furnished by a union consists of more than 5,000 names, the number of persons to be personally interrogated should be 2 per cent subject to a minimum of 250.

The persons selected for personal interrogation should among other things be asked whether they are members of a particular union and whether they had paid subscriptions for 3 months within a period of six months from the date of reckoning and if so, the amount of subscription paid, the months for which it was paid, etc. The verification officer will maintain a list of members personally interrogated, giving their ticket numbers, names of section where working, the result of personal interrogation, etc.

(8) Where the sample check reveals that certain members interrogated deny membership of a union, its list of members will be modified proportionately. For example, if on checking records, it is found that a union has 2,000 valid members and the rival union objects to, say, 800, of these members, a 15 per cent sample of the latter has to be drawn, i.e., 120 persons have to be interrogated personally. If on personal interrogation it is found that 30 of the 120 persons (i.e. 25 per cent) deny membership of the union, the strength of the union will be reduced by 25 per cent or 800 persons whose membership was objected to, i.e., by 200. In other words, the final strength of the union will, in this case, be 1,800;

{2000-(25 per cent of 800)=1800}

If the persons who, on interrogation deny their membership of the union claiming them as their members inform the verification officer that they are members of a rival union, the verification officer will check their membership with the list of members and records of that union and adjust its list accordingly, i.e., their names will be added to the list of the rival union if they are not already included in it, and excluded, in the manner mentioned above, from the list of the claimant union.

(9) While conducting personal verification as mentioned in para (7) above, the verification officer will not allow the representative of any union or management to be present.

(10) The verification officer will report his findings to the Central / State Implementation

Machinery which in turn will communicate its decision to the management as well as to the unions. In his report the Verification Officer will also indicate the total number of workers in the establishment and the percentage of the verified membership in it.

... ..."

It is, thus, clear that as per the Code of Discipline, it is required to be verified whether a member has paid subscription for at least 3 months during the period of six months immediately preceding the date of reckoning.

16. It is required to be noted that, in the past also, verification process was initiated by an Assistant Commissioner of Labour. Some petitions were filed on behalf of the Unions. One of the petitions was filed by the present petitioner-Union itself and another petition was filed by respondent No.4-Union, and, as narrated earlier, those petitions were disposed of by this Court, with necessary directions. It was found, at that time, that the petitioner-Union was not given reasonable opportunity to put forward its claim and, in fact, it was found that without taking into account its say and without giving the petitioner-Union adequate opportunity to produce the record, the decision was arrived at by the said Assistant Labour Commissioner. Under the circumstances, the Court directed to initiate fresh proceedings for verification of the membership within the stipulated time. In the instant case, the earlier Officer, viz., Mr.M.V. Jadeja, initiated the proceedings, but when the petitioner-Union made grievance, he requested the State Government to appoint some other Officer. Under these circumstances, the Deputy Labour Commissioner Mr.Patel and two other Officers have undertaken the work of verifying the membership of the concerned Unions of employees of the respondent No.7-Company. It is not in dispute that when Mr.Jadeja initiated the enquiry, certain documents were already produced by respondent No.4-Union and since the petitioner was not willing to cooperate with the said enquiry, no record was produced by the petitioner before said Mr.Jadeja and, subsequently, the enquiry was continued by Mr.A.K. Patel. However, Mr.Patel, after taking charge of the proceedings, intimated the petitioner-Union to produce necessary documents. It is submitted by Mr.Clerk that respondent No.4 had not produced its record immediately before Mr.A.K. Patel.

However, it is required to be noted that Mr.Jadeja had conducted the enquiry. In fact, it cannot be said that it is a de novo proceedings. In furtherance of the said enquiry, Mr.A.K. Patel, the Deputy Commissioner of Labour, who was in charge of the enquiry at the relevant time, in fact, granted sufficient time to the petitioner for producing the documents in question. Considering the letter of Mr.A.K. Patel at Annexure 'J', dated 29.4.2002, it is clear that, in continuation of the earlier enquiry initiated by Mr.Jadeja, the petitioner was asked to produce the record, as, admittedly, the petitioner had not produced any document at the relevant time when Mr.Jadeja initiated the enquiry. When the respondent No.4-Union had already produced documents when Mr.Jadeja initiated the proceedings, it was not necessary for respondent No.4 again to produce the documents, especially when whatever proceedings initiated by Mr.Jadeja upto that date cannot be said to have been wiped out totally. Since the petitioner had not produced any documentary evidence before Mr.Jadeja, naturally, Mr.A.K. Patel, who continued the enquiry, gave opportunity to the petitioner-Union to produce necessary documents. In my view, therefore, it cannot be said that any prejudice is caused to the petitioner in any manner. It is required to be noted that, as a matter of fact, the Officer was fair to all the concerned Unions. As and when any prayer for time was made, the same was granted from time to time. It is required to be noted that the concerned record is required to be checked with the muster roll maintained by the Company. The provisions in the Code of Discipline itself suggest that the records of the Union is to be counter checked with the muster roll of the Company. Under the circumstances, even if respondent No.4 had demanded, at a later point of time, to give copies of the Muster Roll and if the same is provided, it cannot be said that the said action on the part of respondent No.1 is contrary to the Code of Discipline. Mr.Clerk, however, submitted that when the petitioner-Union submitted its objections there and then, the respondent No.4 Union also should have done the same thing; instead, it was granted time by providing copy of the muster roll. It is, however, required to be noted that respondent No.1 intimated other Unions also that since respondent No.4 has been given copy of the muster roll, they are also entitled to such copy and in fact, copies were also given to such Unions. In any case, there is nothing on record which suggests that the process must be completed then and there only and that the proceedings cannot be adjourned by respondent No.1. The procedure followed by respondent No.1 is in consonance with the Code of Discipline as the record of

the Unions must tally with the muster roll of the Company.

17. It is next argued that the personal verification should have been on sample basis and the respondent No.1 has committed an error by interrogating each and every concerned workman, on whose behalf objections were lodged by their Union. So far as this aspect is concerned, respondent No.1 has dealt with the same in detail in his reply. So far as sample checking is concerned, the object of the same is to save time. By such sample checking, the effect is that a 100% checking by way of personal verification is made. In a particular concern, if there are so many employees, it may not be feasible to call each and every workman for personal verification. Therefore, random checking is to be undertaken in order to save time, which is likely to occur in such checking. However, if, in a given case, instead of resorting to sample checking, if 100% physical verification is made by calling each of the workmen in camera, it cannot be said that the procedure as per the Code of Discipline is not followed. In fact, it is a more scientific way of personal verification, as, ultimately, wish of each and every workman is made known. In the instant case, the Officer has, instead of saving time, consumed more time by going through the said process. In view of the history of the present case, it seems that respondent No.1 decided to be liberal in giving time for production of record and even in order to be doubly sure that there may not be any error even in personal verification undertaken in camera, he has called all the workmen, on whose behalf objections were filed. It is not a case where all the employees of respondent No.7-Management were called. Such category of workmen, wherein objections were lodged by either of the Unions, was called for personal verification by undertaking in camera proceedings. It is argued by Mr.Clerk that the said procedure is not, as such, undertaken in camera and secrecy was not maintained. However, it is not possible for this Court to give any finding on this aspect, as, that will be within the realm of disputed questions of fact. The Officer concerned has already filed his affidavit, wherein he has stated that he has carried out personal verification in camera. There is no reason to doubt the contents of the affidavit-in-reply of respondent No.1. Ultimately, the process of verification is completed by him and recommendation is made as per his letter at Annexure 'A'. Considering the said aspect, in my view, in cannot be said that respondent No.1 has totally disregarded the procedure prescribed in the Code of Discipline. It seems that respondent No.1 was more

comprehensive, perhaps in view of the allegations levelled against his predecessor, and, as stated earlier, the Division Bench set aside the decision of Mr.Jadeja, as no opportunity was given to the petitioner-Union for production of the documents in question. In my view, therefore, respondent No.1 has acted in consonance with the Code of Discipline. Whatever records which were submitted by the Unions are required to be checked with the Muster Roll. The said exercise is undertaken and, ultimately, personal verification is made in camera. If, in a given case, the Union is allowed to produce evidence even at a later stage, or even a copy of the muster roll is given to a particular Union, it cannot be said to be a ground for setting at naught the entire verification process.

18. Considering the documentary evidence as well as the affidavit-in-reply, following facts are not in dispute :-

(i) All the rival Unions were permitted to produce whatever documentary evidence they wanted to produce on record;

(ii) Concerned Unions were given reasonable time, and for that, even the matter was adjourned from time to time, for production of documents;

(iii) On availability of record of the concerned Union, the same was verified and was counter checked with the Muster Roll of the Company;

(iv) All the rival unions were given reasonable opportunity to put forward their case; and

(v) The verification process was carried out in consonance with the principles of natural justice;

A n d

(vi) Personal interrogation in camera was carried out by calling each and every employee, on whose behalf objections were taken by the other Union. So, more than reasonable care was taken and, instead of going through random sampling, 100% verification of such workmen was made in camera.

19. Considering the aforesaid aspect of the matter, it cannot be said that respondent No.1 has acted either in a mala fide or arbitrary manner. Simply because the

other Union is given some time or were allowed to produce record at a later point of time and simply because, instead of random sampling, full-fledged verification in camera is done in connection with the employees, who were subjected to certain objections, itself is no ground for setting at naught the recommendation of respondent No.1.

20. So far as the argument of Mr.Clerk that some of the names of the office bearers have been wrongly shown as belonging to respondent No.4-Union is concerned, this Court cannot undertake detailed exercise in order to find out the veracity or otherwise of such dispute. Such type of exercise cannot be made by this Court in a petition filed under Article 226 of the Constitution of India. Even apart from that, when the Officer concerned has undertaken personal verification in camera by acceding to the wish of each and every such workman, there is hardly any substance in the contention of Mr.Clerk. As a matter of fact, the Officer, after considering the documentary evidence produced by the Union, has verified the said documentary evidence and compared the same with the muster roll and when it was found that so many workmen are the members of more than one Union and since there were objections in connection with so many workmen concerned, ultimately, decided to carry out the personal verification process in camera. It cannot be said that his decision is solely based on such personal verification, as, ultimately, the same was compared with the muster roll and other documentary evidence on record and, ultimately, he has reached the said conclusion. Therefore, it cannot be said that the documents prepared by the Union as well as the muster roll are given a total goby. In fact, personal verification is done and the same was corroborated with the documentary evidence on record. Under the circumstances, in my view, it cannot be said that respondent No.1 has committed any error of law. Respondent No.1 is required to carry out the exercise in order to find out the exact position about the strength of workmen of a particular Union. As rightly contended by Mr.Sinha, the Code of Discipline itself is not having any statutory force, but in order to find out as to which Union represents majority of the workmen, procedure is evolved and the exercise is required to be done through the Government Agency. As pointed out earlier, in order to see that the rival unions are permitted to produce evidence, time was given from time to time and, after completing the process of verification, the outcome is communicated to the Management. It is a different matter, if respondent No.1 had not given reasonable opportunity to the rival Unions to produce documents on record, as has been done in the

past. Considering the totality of the facts and circumstances of the case, in my view, it cannot be said that respondent No.1 has committed any error which requires interference of this Court under Article 226 of the Constitution of India.

21. It is required to be noted that even otherwise, a deviation from the Code of Discipline here or there itself may not result in setting at naught the entire verification process. Assuming that there is some deviation, then also, it is required to be seen whether more or less the Code of Discipline is followed by respondent No.1 and whether by such deviation, any prejudice is caused to either side. In the instant case, respondent No.1 has undertaken enquiry in consonance with the Code of Discipline itself and, as such, it cannot be said that he has given a complete goby to the Code of Discipline. Code of Discipline is not a statute, where one is required to go exactly word by word. It is enough even if more or less, the Code of Discipline is substantially followed by the Officer concerned.

22. At this stage, reference is required to be made to certain judgments cited by Mr.Clerk.

Firstly, Mr.Clerk has relied upon the decision of Karnataka High Court in The Hind Mazdoor Kisan Panchayath Vasavadatta Cement Workers Union and another v. The Commr. of Labour and Registrar of Trade Unions in Karnataka and others, 2001 LAB. I.C. 3260. Considering the scheme of the Trade Unions Act and the Code of Discipline accepted by the employers and workers, the Karnataka High Court observed as under :-

" ... ...

11. The code of discipline is accepted by all the Employers and Workers organisations at the 16th session of the Indian Labour Conference held at Nainital in May 1958. No doubt, the code of discipline has no statutory force. But, this code of discipline has to be observed, applied and followed both by the employer and the employees in order to have industrial peace.

12. The first respondent - Commissioner having appointed the returning officer with a direction to hold referendum confining only to six recognised unions and pursuant to that the returning officer having issued the calender of

events fixing the date of election should not have interfered in the process of election by issuing a direction to the returning officer not to proceed with the election. Further, even assuming that there are defects in the calender of events issued by the returning officer and if there is any such representation alleging any defect, the Commissioner ought to have issued notice to six unions in respect of which the referendum has been confined by an earlier order, before directing the Returning Officer not to proceed with the election.

13. In the instant case, the first respondent-Commissioner had not issued any such notice afforded any opportunity to the interested six unions. Therefore, the first respondent-Commissioner by modifying the earlier order and directing the returning officer to hold an election by extending the referendum to other two unions, i.e. respondents 8 and 9 is illegal as per the code of discipline found in Annexure I which reads as follows :-

"Where there is more than one Union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply".

14. From this it is seen that in order to get recognition by the management, the Union should have completed one year from the date of registration. Admittedly, respondents 8 to 9 have not completed one year as on the date of calender of events from the date of registration. If that is so, these two Unions cannot be recognized by the third respondent till the expiry of one year from the date of registration. If at all, if the respondents 8 and 9 are not entitled to get recognition by the third respondent, they shall not be permitted to participate in the referendum in order to elect the union for the purpose of representing the interest of the workers with the management. Therefore, in my view, the order issued by the first respondent directing the returning officer to hold the referendum including respondents 8 and 9 is liable to be quashed as they are not eligible to get recognition as per code of discipline. Further, the impugned order is also

liable to be quashed as the first respondent-Commissioner has no jurisdiction to interfere with the process of election after issuance of calender of events by the returning officer. The impugned order is also illegal because no opportunity has been afforded to the interested Unions before cancelling the calender of events and also before passing an order Annexure - H.

... ..."

However, so far as the facts of the present case are concerned, in my view, respondent No.1 has acted in consonance with the Code of Discipline.

Mr.Clerk has relied upon the decision of the Andhra Pradesh High Court in Sri Visakha Gramena Bank Employees Association, Srikakulam v. Government of India, Ministry of Finance, New Delhi and another, 1990 LAB I.C. 606. The Andhra Pradesh High Court has observed as under :-

" ... ...

9. On the above contentions, the following points arise for consideration :-

(1) Whether the petitioner-union is governed by the 'Code of Discipline' in industry, as evolved by the 16th Session of the Indian Labour Conference held in May, 1958, adopted by agreement between the parties?

(2) Whether the petitioner-union is entitled to any higher rights of recognition than stated in the Code of Discipline?

(3) Whether the directions issued by the Government of India are within the scope of S.24 of the Regional Rural Banks Act, 1976?

(4) Whether the petitioner's fundamental right under Art.19(1)(c) of the Constitution of India is affected?

(5) Whether the petitioner can rely upon any of the provisions of the Trade Unions Act?

(6) Whether the impugned orders of the Government and of the Bank are invalid?

This is not a case dealing with violation of Code of Discipline or its enforcement but a case dealing with its interpretation by the Central Government.

xxx xxx xxx

Point 4.

25. So far as the fourth point is concerned, it has been held in M.A. David v. State of Kerala (1971) 1 Serv. LR 472 : (1972 Lab IC 453) that denial of recognition does not constitute a violation of any of the fundamental rights under Art. 19(1)(c) of the Constitution of India. Relevant case law in that behalf was referred to by Balakrishna Eradi, J. (as he then was). Therefore, this point has to be held against the petitioner.

Point 5.

26. Coming to the fifth point, it may be noted that the Trade Unions Act deals merely with the registration of trade unions and the conditions for registration and it has nothing to do with recognition of Trade Unions. The matter of recognition is governed by the "Code of Discipline" referred to above. The petitioner-Union, therefore, cannot rely upon the provisions of the Trade Unions Act.

... ..."

Relying upon the said judgment, Mr.Clerk submitted that if there is a breach of Code of Discipline on the part of the verifying Officer, this Court can issue writ for such breach of the Code of Discipline.

Mr.Clerk has relied upon the decision of the Supreme Court in General Secretary, Rourkela Sramik Sangh v. Rourkela Mazdoor Sabha and others, 1991 Supp (1) SCC 305. In paragraphs 8 and 9, the Honourable Supreme Court held as under :-

" ... ...

8. It will thus be apparent from the aforesaid provisions of the Code that the "Implementation Machinery" envisaged by the Code consists of two separate organisations, viz., Implementation Units in the respective Labour Departments, and Tripartite Implementation Committees at the Central, State and local levels. Each of the organizations has been assigned different functions and they are independent of each other while carrying out the same. While the Central Implementation and Evaluation Division is set up in the Ministry of Labour and Employment under the charge of a Joint Secretary, the Implementation Units in the States are set up under the charge of a whole time Officer of the Labour Department. It is recommended that the Implementation Officer should be a whole time officer and of sufficient seniority as far as possible. The implementation Units have, among other things, been entrusted with the task of ensuring that every management sets up a grievance procedure in consultation with their workers and ensuring that recognition is granted to unions by management wherever they satisfy the prescribed criteria as laid down in Annexure I of the Code. Further preconditions for recognition are laid down in clause (1) of Appendix IV. Thus the constitutions of the implementation Units and Implementation Committees are different and they function in different areas.

9. It appears that the High Court has basically been swayed by the fact that in clause (1) of Appendix IV it is stated that on the receipt of the representation from unions for recognition, the Central/State "Implementation Machinery" will first ascertain the facts stated in sub-clause (a), (b) and (c) thereof and thereafter, if at the Centre the "Implementation Machinery" will require the Chief Labour Commissioner to arrange the verification of membership of unions entitled to recognition and if in the States either the Implementation Officer will carry out the verification or get it done through the State Labour Commissioner depending upon the practice obtaining in each State. The High Court also seems to have been influenced by the provisions of clause (10) of the said Appendix which requires the Verification Officer to report his findings on membership to the Centre/State

"Implementation Machinery". The High Court has obviously mistaken the whole for the part. As we have pointed out earlier, although Section II of the Code is headed "Implementation Machinery" the "Implementation Machinery" consists of two separate organisations, viz., Implementation Units and Tripartite Implementation Committees. This is obvious from the language of Section II itself. Their separate constitutions and functions also make this aspect clear. What is further, to hold that the Implementation Unit in the respective Labour Department together with the respective Tripartite Implementation Committee at the Central, State or local level would constitute the Implementation Machinery jointly and not each of them separately would run not only counter to the intention of the Code as is manifest from the clear language of Section II and their separate composition and functions, but would also be impracticable in working. We have reproduced above the composition of the Implementation Committees at the Centre and the State level. These Committees consist of, at the Central level, an equal number of employers' and workers' representatives - four each from the Central Employers' and Workers' Organisations as nominated by the organizations themselves. At the State level, they are required to be constituted similarly and in consultation with the Central Employers' and Workers' Organisations wherever they have affiliates in the States concerned. The Committees are further presided over as far as possible by respective Labour Ministers and even where it is not possible for Labour Minister to preside over them, they have to associate themselves as much as possible with the deliberation of the Committees. At the local level, the Committees are similarly constituted of an equal number of representatives of the employers' and workers' in the area and are presided over by an officer of the Labour Department or by a prominent person in the region. In a given case there may be more associations than one of employers and employees, and the Committees would thus consist of an unwieldy number. To expect such a Committee to carry out the work mentioned in Appendix IV is unrealistic. That is why the Code itself has entrusted to the Implementation Units and not to the Implementation Committees the task of ensuring that recognition is granted to unions by

management. At the Centre, the Implementation Unit is kept in charge of a Joint Secretary and at the State level it is in charge of a whole time officer of the State Labour Department.

... ..."

Relying upon this judgment, it is argued by Mr.Clerk that even though the Code of Discipline may not have statutory force, if the procedure is violated, a writ can be issued against respondent No.1 and he may be directed to carry out verification process afresh.

Mr.Clerk then relied upon the decision of the Apex Court in Automobile Products of India Employees' Union v. Association of Engineering Workers, Bombay and others, (1990) 2 SCC 444. So far as the aforesaid decision is concerned, the same is in connection with the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. So far as the recognition of the Union is concerned, statutory recognition is given under the Act. Considering the scheme of the said provision, it has been observed by the Apex Court as under :-

" ... ...

20. The facts in the present case would reveal that what was done by the Industrial Court was to permit the registration of the union as a recognised one by a method which was clearly alien to the Act. The Court in effect allowed the parties to circumvent the provisions of the Act and by adopting a simplistic method directed that whoever commanded a majority of votes of the employees voting on a particular day, would be entitled to the status of the recognised union. In effect, therefore, the Court ignored in particular the mandatory provisions of Sections 10, 11, 12, 14 and 19 of the Act. Not only that, but by adopting this method, the Court also failed to find out whether any of those workers who voted were members of any of the two unions at any time including on the day of the ballot. This is apart from the fact that what has to be found out is the exclusive membership of the contesting unions continuously over the specified period, the overlapping membership being ignored.

21. The consent of the parties to follow a

procedure which is against the mandatory provisions of the Act, cannot cure the illegality. For reasons which we have indicated earlier the legislature did not opt for the ballot as a method for determining the representative character of the union and laid down an elaborate procedure with necessary safeguards, to do so. In the circumstances, to permit the parties by consent to substitute a procedure of their own is in effect to permit them to substitute the provisions of the Act.

22. Hence, we are of the view that the order of the Industrial Court granting recognition under the Act to the appellant-Union by following the method of ballot is prima facie illegal being in breach of the provisions of the Act. The High Court had, therefore, rightly interfered with the said order by relying on its earlier decision in the case of the Maharashtra General Kamgar Union, (supra). In the result, the appeals fail and are dismissed. The matter is remanded to the Industrial Court for disposal according to law. It is, however, made clear that if there are any settlements which have been arrived at between the appellant Union and the respondent-Company, they will be allowed to run their full course. The appellant-Union will not enter into any settlement during the pendency of the present proceedings and if any settlement is to be entered into, it should be done only with the consent of the respondent-Union which has not lost its recognition as yet. There will be no order as to costs.

... ..."

So far as the present case is concerned, the parties are governed by the Code of Discipline and the Implementing Agency is required to follow the said course for arriving at a conclusion about the strength of a particular Union. As discussed earlier, the decision is arrived at after going through the procedure prescribed under the Code of Discipline.

Mr.Clerk has also relied upon the decision of the Apex Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others, (2003) 2 SCC 111. Reliance is placed on paragraph 40 of the said judgment, which reads as under :-

" ... ...

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do anything in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.

... ..."

As indicated above, so far as the procedure in connection with verification of the membership of rival Unions is concerned, the same is governed by the Code of Discipline and the procedure as prescribed under the same is required to be followed, which, in fact, has been followed by respondent No.1. It is not possible for this Court to believe that respondent No.1 has deviated from the said procedure and has arrived at a conclusion in an arbitrary or whimsical manner. In fact, he has taken all reasonable care for arriving at a particular conclusion and, as indicated in the earlier part of this judgment, he has followed the principles of natural justice and he has given opportunity to all rival unions to produce their record, which is compared with the muster roll of the Company and considering the objections lodged by the concerned Union, such workmen, qua whom such objections were raised by the Union, were personally interrogated in camera and ultimate decision is taken. Considering the aforesaid aspect of the matter, in my view, it cannot be said that respondent No.1 has deviated from the Code of Discipline, as such, for which this Court is required to issue a writ, asking respondent No.1 to undertake fresh verification process. Even otherwise, considering the fact that it is a case wherein there is duplicate registration of so many employees, the concerned Officer is required to verify the records and after checking and counter-checking the record with the muster roll, ultimately, personal verification test is required to be undertaken, which, as such, has been undertaken by the concerned Officer. It cannot be said that respondent No.1 has totally disregarded the documentary evidence on record and respondent No.1 has, ultimately, tried to arrive at a just conclusion considering the record of the Unions, muster roll, coupled with the fact that personal verification of each and every workman, who were subjected to objections by the concerned Unions, was also

undertaken.

23. Considering the matter from the aforesaid angle, in my view, it cannot be said that there is a substantial deviation from the Code of Discipline or any of the Rules of the same. Respondent No.1, after having undertaken the verification process, has already intimated the Management to give recognition to respondent No.4-Union. A period of more than one year has passed. Still, respondent No.4-Union has not been given such recognition. I, therefore, do not find any substance in this petition. Hence, the same is rejected. Rule is discharged. No costs.

At this sage, Mr.Clerk submits that the interim relief granted by this Court may be continued for a period of four weeks so that in the meanwhile, the petitioner can either prefer an appeal or take other appropriate proceedings. Mr.Sinha strongly objected the same on the ground that one year has passed after respondent No.1 has given recognition to respondent No.4-Union. He submitted that the life of such recognition is only for two years, and, according to him, since one year has already passed, interim relief may not be extended further. However, considering the fact that this Court, while admitting the matter, has already granted interim relief, since the petitioner wants to file an appeal, at least for some time, interim relief granted by this Court is required to be extended. Under the circumstances, interim relief granted by this Court is ordered to be continued for a period of three weeks from today.

22nd August, 2003 (P.B. Majmudar, J.)

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(apj)